Application No. 10/765,511   PATENT
Response Dated 05/24/2011
Reply to Office Action of 03/30/2011   Agent's Docket No. 2173-170

Remarks:

Claims 1 to 10, 12, and 13 are pending in the application.

Claims 1 to 10, 12, and 13 stand rejected.

Claims 1, 2, 3, 6, 7, 8, 10 and 12 have been amended. Claim 5 has been canceled. No new matter has been added by these amendments

Obviousness rejection under 35 U.S.C. §103

Claims 1, 3-10 and 12 stand rejected under 35 U.S.C. §103(a) as unpatentable over Birum in view of Yu. Applicant respectfully disagrees having regard to the following discussion.

Independent claims 1, 10 and 12 have been amended to recite the features of : "creating by a processor of the mobile station non-volatile memory items for a software load", "preventing deletion of any non-volatile memory items once said non-volatile memory items are created" , "sending only said software identifier along with an identification of a particular carrier company associated with the mobile station, without additional information, to said network"; " receiving from said network a set of changes related to said software identifier for said carrier company" and adding of a new non-volatile memory item rather than replacing a value in an existing non-volatile memory item occurs "when the new non volatile memory item corresponds to the existing non volatile memory item".

All of the above features distinguish over Birum. For example, nothing within the Birum reference teaches "creating by a processor of the mobile station non-volatile memory items". The list of resources referred to on Birum is a listing of resources that are identified as belonging to a particular version of an application. Birum defines resources to mean any data an application uses for execution. A person skilled in the art would not equate a list of resources as being equivalent to non-volatile memory items nor is there any teaching in Birum of creating such a list in non-volatile memory.

Furthermore, there is nothing in Birum that teaches "preventing deletion of any non-volatile memory items once said non-volatile memory items are created".

Birum does not teach "adding, when upgrading to a new software load, a new non-volatile memory item rather than replacing a value in an existing non-volatile memory item when the new non volatile memory item corresponds to the existing non volatile memory item". Even when Birum at para. [0045] states that "When such a resource does exist on a client computer, however, the upgrade list may specify that it should not be replaced", this does not teach or suggest "adding... a new non-volatile memory item". In other words the subject claims specifically recite the adding of a new non-volatile memory item rather than replacing, even in the instance of there being a corresponding existing non volatile memory item.

Furthermore claim 1 has been amended to recite sending only an identifier without additional information; in contrast Birum contemplates sending an entire file rather than a software identifier without additional information as defined in the present claims. Accordingly, Birum also does not teach sending the software identifier.

Birum also does not teach " receiving from said network a set of changes related to said software identifier for said carrier company".

Accordingly, the applicant respectfully disagrees with the Examiner's assertion that Birum teaches features of claim 1.

The Examiner has introduced Yu as teaching the identifier indicating a particular carrier. This element has been amended to explicitly recite "identification" of a particular carrier. Yu sends a mobile identifier and not a carrier identification. A person skilled in the art would recognize that a mobile identifier as not the same as a carrier identifier. Furthermore based on the above discussion of Birum even if Birum were combined with Yu, the combination would not teach all the features of the subject claims.

Thus even when combined with **Yu, Birum** and **Yu** do not teach all the features of the subject independent claims 1, 10 and 12.

Therefore, applicant respectfully submits that a prima facie case of obviousness has not been established in respect of independent claims 1, 10 and 12 by failure to produce prior art teaching of each and every element claimed and because it would not have been obvious to one of ordinary skill in the art to combine the cited references.

Dependent claims 3 -4, 6- 9 variously depend directly and/or indirectly from independent claim 1, and therefore incorporate all respective limitations of independent claim 1. Applicant respectfully submits that a case of obviousness has not been established in respect of dependent claims 3-4, 6-9 for the above reasons.

b)   Claims 2 and 13 stand rejected under 35 U.S.C. §103(a) over Birum in view of Yu and Moore. Applicant respectfully disagrees.

Dependent claims 2 and 13 respectively depend directly from independent claims 1 and 12 and therefore incorporate all respective limitations of independent claims 1 and 12. For the reasons that Birum and Yu cannot render these claims obvious, and therefore the rejection based on the combination of Birum, Yu and Moore is rendered moot.

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Reconsideration and allowance are respectfully requested.

Respectfully submitted,

Joseph L. Ulvr
Registration No. 57696
Agent of Record

Moffat & Co.
Macera & Jarzyna
427 Laurier Ave W.
Suite 1200
Ottawa, Ontario, Canada
K1R 7Y2
(613) 232-7302